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APR 10 2014	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

Julian Valdez-Aragon
Reg. No. 44733-048
Taft Correctional Institution
P.O. Box 7001
Taft, California 93268

In Pro Se

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JULIAN VALDEZ-ARAGON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO: 2:10-CR-89-GMN-LRL
(\$2255 proceeding)

**SECOND MOTION FOR EXTENSION
OF TIME TO FILE A SECOND
SUPPLEMENT AS ORDERED BY THE
COURT, AND ORDER THEREON**

On February 7, 2014, this Honorable Court authorized discovery Pursuant to Rule 6(a) Governing Section 2255 proceedings. Although the custodian of the record attempted to comply with the approved subpoena, prison regulation prevented the service. Now, Petitioner Julian Valdez-Aragon ("Petitioner"), who is litigating this case without counsel, hereby files the instant motions requesting (1) appointment of counsel for discovery process and (2) second request for extension of time to file the ordered second supplement in support of Petitioner's \$2255 motion to vacate and correct his sentence pursuant to Title 28 U.S.C. Section 2255.

The motions are based upon the original petition, together with all of the papers, pleadings and Court Orders on file and the evidence and argument to be presented at the hearing the petitioner request on his ineffective assistance of counsel issue raised in the original petition for relief.

Dated this 7 the day of April, 2014.

Respectfully submitted,

Julian Valdez-Aragon
Julian Valdez-Aragon

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. Introduction and Relevant Facts

3 1. Petitioner Julian Valdez-Aragon ("Petitioner") is a prisoner
4 proceeding in this Section 2255 action without counsel. Following its practice
5 in this type of proceedings, after the government and petitioner filed their
6 ordered response and reply, this Court considered and authorized Petitioner's
7 request for discovery pursuant to Rule 6(a) Governing Section 2255 proceedings,
8 and provided a blank subpoena to Petitioner which he used to obtain records
9 from Las Vegas Metropolitan Police Department Forensic Laboratory ("LVMPD
10 LAB"). This Court gave Petitioner until March 17, 2014 to file, after
11 receiving the discovery sought, a Second Supplement to his pending Section 2255
12 petition. (Documents 84&85)

13 2. Due to an apparent reasonable delay in providing the discovery
14 material by the LVMPD LAB, upon Petitioner's request, on March 19, 2014, this
15 Court granted extension of time to file the ordered supplement until **Wednesday**
16 **April 16, 2014.** (Document 87) On March 20, 2014, Petitioner received
17 correspondence from the LVMPD LAB indicating the compliance of the subpoena-
18 discovery. At the same time, however, the prison gave notice to Petitioner
19 and the LVMPD LAB that unauthorized material, the "CD" containing the discovery
20 in question, was returned without being forwarded to Petitioner. See Copies
21 Attached ##1&2, respectively.

22 3. Petitioner then sent a letter to the LVMPD LAB notifying it that
23 the "CD" containing the provided discovery was returned to them without being
24 served, and also submitted a CP-006 (TCI Inmate Request to Staff) to the prison
25 Warden, making him aware of the necessity of receiving the discovery material,
26 and enquire whether there was another alternative to receiving. See Copies
27 Attached ##3&4, respectively. On March 25, 2014, the Warden responded to
28

1 Petitioner's inquiry indicating that the "CD" should be sent (by the LVMPD LAB)
2 "to someone on the outside such as family member or attorney." See Copy
3 Attached #5. The problem is, however, that Petitioner has no one outside who
4 can help him in this matter, and pursuant to the LVMPD Forensic Laboratory
5 Receipt accompanying the discovery material, "Dissemination [of the discovery
6 material] is restricted to the requesting party ONLY," and "Secondary
7 Dissemination is PROHIBITED." (brackets added) See Attached Copy #6.

8
9 B. Reasons for the Appointment of Counsel for Discovery

10 4. This case is a clear example of the perils that pro se prisoners
11 suffer during discovery in 2255 proceedings. Here, Petitioner's pleadings in
12 this case are far from being stylistically or grammatically perfect, and
13 reveals the lack of legal training. Nevertheless, he did not previously ask
14 the help of an attorney because he has attempted to be objective and honest
15 as he knew he had no absolute right to the appointment of counsel at an earlier
16 time in his Section 2255 proceedings. Nevius v. Sumner, 105 F.3d 453, 460 (9th
17 Cir. 1996). However, 18 U.S.C. §3006A authorizes the appointment of counsel
18 at later time "if the interest of justice so require." See Rule 8(c) Governing
19 2254 and 2255 proceedings. Here, at this stage, such is the case.

20 5. Petitioner requested discovery process in this case because such
21 discovery is relevant to the Court's determination of Petitioner's claim of
22 ineffective assistance of counsel. Additionally, this Court authorized the
23 requested discovery because Petitioner met the "good cause" standard of Rule
24 6(a) Governing Section 2255 cases. However, despite Petitioner's diligent
25 efforts, he is now manifestly unequipped to continue with the discovery process
26 and right to access to this Court. See Lewis v. Casey, 518 U.S. at 355 (1996):

27 //

1 "Bounds does not guarantee inmates the wherewithal to transform
2 themselves into litigating engines capable of filing everything
3 from shareholder derivative actions to slip-and-fall claims.
4 **The tools it requires to provide are those that inmates need in
5 order to attack their sentences, directly or collaterally ..."**

6 Here, the necessary tools are the discovery material (already granted but not
7 yet received) and the appointment of counsel (which is, under the
8 circumstances, required) to conduct the discovery process.

9 6. Petitioner is aware that although Rule 6(a) permits the appointment
10 of counsel for the limited purpose of discovery, appointment of counsel is not
11 necessary for the parties to conduct "effective" discovery. However, this is
12 not the case where the circumstances just prevent "effective" discovery.
13 Rather, in this case the circumstances prevent the "complete" exercise of
14 discovery, and such circumstances are beyond Petitioner's control or due
15 diligence. Here, the discovery involved in this case would develop facts
16 sufficient to require an evidentiary hearing or, after following "expansion
17 of the record" to include the discovered material, justify relief without a
18 hearing. Moreover, although Rule 8 Governing Section 2255 proceedings provide
19 for the appointment of counsel at the evidentiary hearing, that future
20 possibility, however, would not assist Petitioner at this stage because it is
21 now when the use of discovery will establish a prima facie case for the relief
22 Petitioner seeks.

23 7. Finally, given the apparent close relationship that exists between
24 the Government and the LVMPD Laboratory, and the obvious close relationship
25 between Petitioner and the members of his family, without counsel, the accuracy
26 and reliability of the information obtained from the CD by another person
27 (other than an appointed counsel) would be subject to questions of
28 impartiality. In this context, the LVMPD LAB's warning that dissemination of
29 the discovery is restricted only to Petitioner (the requesting party) and the

1 dissemination to others "is prohibited," makes factual and legal sense and
 2 reinforces the necessity of an appointed counsel for the discovery process.

3
 4 **C. A Second Extension to File the Ordered Second Supplement Is Necessary**

5 8. On February 7, 2014, this Court authorized discovery pursuant Rule
 6 6(a) Governing Section 2255 proceedings and ordered Petitioner to file a second
 7 supplement to his §2255 petition after receiving the discovery material from
 8 the LVMPD LAB. (Document 84) As described in detail in the first section of
 9 this document, the LVMPD LAB complied with the discovery subpoena but due to
 10 the prison's rules the material was returned to the senders without being
 11 served to Petitioner.

12 9. The due date to file the second supplement in question is **Wednesday,**
 13 **April 16, 2014.** Under the circumstances, without counsel, Petitioner is unable
 14 to comply with the Court's Order in timely manner. The extension is reasonable
 15 because in the event that a counsel is appointed, or other appropriate solution
 16 is ordered by this Court, additional time is reasonably necessary.

17 10. WHEREFORE, in the interest of justice and good cause shown,
 18 Petitioner Julian Valdez-Aragon respectfully asks this Honorable Court to GRANT
 19 these two motions.

20
 21 Respectfully submitted,

22 Julian Valdez-Aragon
 Julian Valdez-Aragon

23 **ORDER**

24 The Court has read Petitioner Julian Valdez-Aragon's Second Motion to Extend Time to File
 25 Second Supplement in support of his Motion (ECF No. 70) to Vacate Under 28 U.S.C. § 2255 re
 26 Order (ECF No. 87), and hereby grants Petitioner's Motion. Accordingly,

27 **IT IS HEREBY ORDERED** that Petitioner Julian Valdez-Aragon shall have through and
 28 including **Friday, May 16, 2014**, to file his Second Supplement in support of his Motion (ECF No.
 70) to Vacate Under 28 U.S.C. 2255.

DATED this 15th day of April, 2014.


 Gloria M. Navarro, Chief Judge
 United States District Court

VERIFICATION AND PROOF OF MAILING

VERIFICATION AND PROOF OF MAILING

I, Julian Valdez Aragon, the petitioner in this action, hereby state under penalty of perjury that the facts contained in the foregoing combined motions "REQUESTING THE APPOINTMENT OF COUNSEL ... [and,] ... EXTENSION OF TIME TO FILE A SECOND SUPPLEMENT ..." are true and correct to the best of my knowledge, understanding and belief. I further declare under penalty of perjury that a true copy of said document was placed in the prison's mailbox on this 7th day of April, 2014, in a sealed first class postage prepaid envelope, properly addressed as follows:

Clerk's Office
Unites States District Court
District of Nevada
Lloyd D. George U.S. Courthouse
333 Las Vegas Boulevard So -Rm 1334
Las Vegas, Nevada 89101

and

Elizabeth Olson White
Assistant United States Attorney
100 West Liverty Suite 600
Reno, Nevada 89501

Executed on: April 7, 2014 By: Valdez J. Aragon

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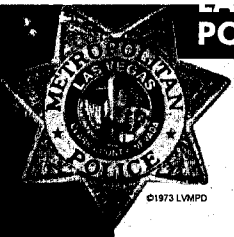
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DOUGLAS C. GILLESPIE, Sheriff

Partners with the Community

#1

March 13, 2014

Julian Valdez-Aragon
Taft Correctional Institution

IN RESPONSE, PLEASE REPLY TO:
Heidi Eldridge, Forensic Scientist II
(702) 828-0175

RE: United States of America vs. Julian Valdez-Aragon
Case # 2:10-CR-89-GMN-LRL
Event # 100215-3558

Dear Mr. Valdez-Aragon:

The Las Vegas Metropolitan Police Department Forensic Laboratory is in receipt of a Subpoena and Court Order regarding United States of America vs. Julian Valdez-Aragon, case # 2:10-CR-89-GMN-LRL. The following addresses items requested:

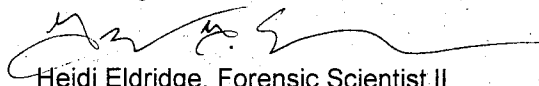
Copies of the logbook book and all the forensic reports for the analysis of the controlled substance seized in the above referred case, AKA Event Number 100215-3558, by Las Vegas Metropolitan Department Forensic Laboratory.

A copy of the Controlled Substances case file was provided, including the report, notes and all other items contained in the case file. A copy of pertinent instrument and reagent logs was also provided.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kim Murga, Lab Director

BY: 
Heidi Eldridge, Forensic Scientist II
Las Vegas Metropolitan Police Department
Forensic Laboratory
5605 W. Badura Ave. Ste 120B
Las Vegas, NV 89118
(702) 828-0175
FAX (702) 828-3948



#2

BP-A0328

STAMPS, NEGOTIABLE INSTRUMENT & OTHER RETURNED TO SENDER CDFRM

APR 11

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

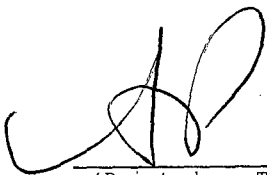
TO: (Sender See Return Address) LVMPD FORENSIC LAB 5605 W. BADURA AVE. STE 120B LAS VEGAS, NV 89118-4705		FROM: (Institution) MTC/TAFT CORRECTIONAL INSTITUTION 1500 CADET ROAD TAFT, CA 93268
INMATE'S NAME: VALDEZ, JULIAN	REGISTER NUMBER: 44733-048	DATE: 3/20/14

Check all that apply:

Material Rejected and Returned		Package Refused and Returned	
Your correspondence has been examined and:		The contents of your correspondence have NOT been examined, however it is being returned to you because:	
<input type="checkbox"/>	You enclosed stamps or stamped items that cannot be given to the inmate.	<input type="checkbox"/>	The inmate has failed to obtain an authorized BP-331, Authorization to Receive Package or Property.
<input type="checkbox"/>	You enclosed a negotiable instrument. Negotiable instruments are to be forwarded to the National Lockbox at the following address: Federal Bureau of Prisons [Insert Inmate Name] [Insert Inmate Register Number] Post Office Box 474701 Des Moines, Iowa 50947-0001	<input type="checkbox"/>	The package has not been properly marked "Authorized by Bureau Policy" in accordance with Program Statement 5800.16, Mail Management Manual, or fails to reasonably indicate the package is authorized by Bureau policy.
<input type="checkbox"/>	You enclosed the following unauthorized material:	<input type="checkbox"/>	The inmate recipient could not be identified due to missing, incorrect, or an illegible name and/or register number.
<input type="checkbox"/>	Stationary/Blank Greeting Cards		
<input type="checkbox"/>	Plant Shavings		
<input type="checkbox"/>	Sexually Explicit Personal Photos		
<input checked="" type="checkbox"/>	Other (specify below)		
<input type="checkbox"/>	The following material cannot be inspected without damage:		
<input type="checkbox"/>	Electronic Musical Greeting Card		
<input type="checkbox"/>	Padded Card		
<input type="checkbox"/>	Double Faced Polaroid Photos		
<input type="checkbox"/>	Other (specify below)		
Your correspondence or letter has, however, been provided to the inmate with a copy of this notice.			

Specific Material Returned:

1 CD.



(Printed or Typed Name and Written Signature of Correctional Systems Officer).

A. PULIDO

Record Copy - Addressee (with material); Copy - Inmate; Copy - Mail Room File.
PDF

Prescribed by P5800

Replaces BP-328.058 of APR 94

#3

Julian Valdez-Aragon
Reg. No. 44733-048
Taft Correctional Institution
P.O. Box 7001
Taft, California 93268

March 22, 2014

Heidi Eldridge, Forensic Scientist II
Las Vegas Metropolitan Police Department
Forensic Laboratory
5605 W. Badura Ave. Ste 120B
Las Vegas, NV 89118

Re: Your Correspondence dated March 13, 2014
Case #2:10-CR-89-GMN-LRL
Event #100215-3558

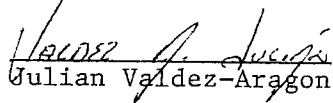
Dear Ms. Eldridge:

I received your correspondence dated March 13, 2014. Please receive my most sincere gratitude for your attempt to comply with the subpoena and the Court's order concerning the referred event. Unfortunately, as you are already aware, the prison sent back the information concerning the referred event because it was a "CD." See attached copy.

I have addressed this matter to the Warden of the prison to find out of any other alternative to receive and review the information in question before addressing this matter to the Court.

I am very optimistic that the Warden or the Court will find a solution to proceed with the discovery process in this case, nevertheless, I found it necessary to offer my gratitude for your diligent effort.

Cordially,


Julian Valdez-Aragon



#4

TCI INMATE REQUEST TO STAFF

NAME: Julian Valdez-Aragon REG # 44733-048 DATE: 3/22/14

Work Assignment: Orderly Unit / Bed: A1B 20L

NOTE: If you follow instructions in preparing your request, it can be disposed of more promptly and intelligently. You will be interviewed, if necessary, in order to satisfactorily handle your request. Your failure to specifically state your problem may result in no action being taken.

TO: Mr. Michael Benov, Warden
(Name and Title of Officer)

SUBJECT: State completely but briefly the problem on which you desire assistance and what you think should be done. (Give details)

Dear Warden:

Complying with a court order, Las Vegas Metropolitan Police
Department Forensic Laboratory attempted to provide documentation requested
by subpoena. Please see attached copy. On March 20, 2014, the institution
returned the information-material to the sender because it was a CD. I do
understand that the prison must return the CD in question in light of its
rules.

I am not challenging or attempting to challenge the prison's
policy in this matter, however, is there any other alternative to receive the
information in question?. Thank you, and please receive my most sincere
gratitude for your time and help in this matter.

Julian Valdez-Aragon

DISPOSITION: (Do not write in this space) DATE: _____

Officer: _____


#5

MTC

MEMORANDUM

Date: March 25, 2014

To: Julian Valdez-Aragon
Reg. No. 44733-048
A06-020L

From: 
Michael L. Benov, Warden

RE: Response to Inmate Request To Staff

I have received your correspondence dated March 22, 2014, in which you inquired if there were any other alternatives to receive the documentation from the Las Vegas Metropolitan Police Department.

You may have the CD sent to someone on the outside such as a family member or attorney. They would then be able to access the information you need, print it off and mail it in.

AD-003

#6

LVMPD FORENSIC LAB DOCUMENT RELEASE RECEIPT

Pursuant to a United States District Court Order dated February 10, 2014 from Gloria Navarro, Chief Judge, United States District Court, the documents and event numbers detailed below were released on March 13, 2014 by Heidi Eldridge, Forensic Scientist II to:

(Print Name Legibly)		(Signature/Title)	
Date: March 13, 2014		Subject: Julian Valdez-Aragon	
Event Number(s): (Main Event number bolded)	Documents:	Pages/ Number:	
100215-3558	CD containing the Controlled Substances examination records of Jason Altnether, including: <ul style="list-style-type: none"> Copy of Report of Examination (1 page) Copy of examination case notes of Jason Altnether (26 pages) Copy of documentation regarding request for discovery (3 pages) 1 Photograph Instrument Maintenance and Test Logs and Reagent Logs (16 pages) 	1 CD	

**Dissemination is restricted to the requesting party ONLY.
Secondary dissemination is PROHIBITED.**

Mr. Valdez-Aragon,

Please sign this receipt
and return it to us in the
attached postage-paid envelope.
This lets us know that you
received the enclosed materials.

Thank you,

Heidi Eldridge